

Delaware River Basin Commission

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AUTHORITY: Delaware River Basin Compact, 75 Stat. 688.

SOURCE: 42 FR 13544, Mar. 11, 1977, unless otherwise noted.

GENERAL

§ 420.1 Definitions.

For the purposes of this part 420, except as otherwise required by the context:

Person means any person, corporation, partnership, association, trust, or other entity, public or private.

Water user means any person who uses, takes, withdraws or diverts surface waters within the Delaware River Basin.

Executive Director means the Executive Director of the Delaware River Basin Commission.

Consumptive use means the water lost due to transpiration from vegetation in the building of plant tissue, incorporated into products during their manufacture, lost to the atmosphere from cooling devices, evaporated from water surfaces, exported from the Delaware River Basin, or any other water use for which the water withdrawn is not returned to the surface waters of the basin undiminished in quantity.

WATER SUPPLY POLICY

§ 420.21 Policy.

The provisions of this part 420 implement Commission Resolution No. 71-4 (Comprehensive Plan) relating to water supply charges.

§ 420.22 Prohibition; sanctions.

Any person, firm, corporation or other entity, including a public corporation, body or agency, who shall use, withdraw or divert surface waters of the basin, shall pay such charges therefor as may be required by this resolution. Any violation of this resolution shall be subject to penalty as prescribed under Article 14.17 of the Compact. The Commission may also recover the value (according to the established water pricing schedules of the Commission) of any such use, withdrawal or diversion, and invoke the jurisdiction of the courts to enjoin any further use, withdrawal or diversion, unless all charges under this resolution are paid in full when due.

§ 420.23 Exempt uses under the Compact.

(a) Section 15.1(b) of the Delaware River Basin Compact provides that "no provision of section 3.7 of the Compact shall be deemed to authorize the Commission to impose any charge for water withdrawals or diversions from the basin if such withdrawals or diversions could lawfully have been made without charge on the effective date of the Compact; * * *" In compliance with this provision: There shall be no charge for water withdrawn or diverted in quantities not exceeding the legal entitlement of the user, determined as of October 27, 1961. Each water user may submit proof satisfactory to the Commission of the factors constituting legal entitlement, as defined in paragraph (b) thereof. In the absence of such proof of these conditions as of October 27, 1961, the quantity of water exempt from charge to each user will be the legal entitlement of the user determined as of March 31, 1971.

(b) For the purposes of paragraph (a) of this section:

(1) *Legal entitlement* means the quantity or volume of water expressed in million gallons per month determined by the lesser of the following conditions:

(i) A valid and subsisting permit, issued under the authority of one of the signatory parties, if such permit was required as of October 27, 1961, or thereafter;

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(ii) Physical capability as required for such taking; or

(iii) The total allocable flow without augmentation by the Commission, using a seven-day, ten-year, low-flow criterion measured at the point of withdrawal or diversion.

(2) *Physical capability* means the capacity of pumps, water lines and appurtenances installed and operable, determined according to sound engineering principles. The physical capability specifically includes plant facilities actually using water, but excludes facilities which may have been installed in anticipation of future plant expansion not yet realized.

(c) Whenever adequate records of legal entitlement for agricultural irrigation purposes are not available to the Commission, such legal entitlement shall be measured by the maximum number of acres under irrigation by the water user at any time during the year ending March 31, 1971, allowing one acre-foot of surface water annually per acre irrigated.

(d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section, there shall be no charge for water made available from storage where:

(1) The cost of the storage facility has or will be otherwise paid for by the user,

(2) Such storage controls a drainage area, and

(3) The use does not exceed the yield of such storage without augmentation from other surface water of the basin.

§ 420.24 Effective date of rates.

Rates and charges shall apply to all water users not exempt hereunder on and after the date of the first impoundment of water for water supply purposes at the Beltzville Reservoir (February 8, 1971), or the effective date hereof, whichever is later.

ENTITLEMENT; MEASUREMENT; BILLING

§ 420.31 Certificate of entitlement.

(a) The Executive Director will issue to each known water user a certificate of entitlement within 30 days after the effective date of these regulations subject to the provisions of paragraph (b). In addition, any other water user may apply for a certificate of entitlement

at any time. A preliminary notice of entitlement shall be issued to each user. Such entitlement shall become final and take effect, unless the user shall file with the Commission, within 20 days after the service of the notice of entitlement, a request for hearing by the Commission. At such hearing the water user may show cause why the proposed entitlement shall not take effect.

(b) The Executive Director shall schedule a hearing to be held not less than ten days after receipt of a request for a hearing by the Commission. Hearings shall be conducted and the results thereof subject to review in accordance with Article 5 of the Commission's rules of practice and procedure.

(c) A final certificate of entitlement will be issued either upon expiration of the time to request a hearing, where there has been no request, or in accordance with the determination of a hearing where one is held.

(d) A certificate of entitlement is not transferable, except as provided in paragraphs (e) and (f) of this section. For the purposes of this section, *transfer* shall mean any sale or other conveyance by a holder of a certificate of entitlement involving a specific facility and shall include any transfer which results in a change of ownership and/or control of the facility or of the stock, or other indicia of ownership of a corporation which holds title to the facility.

(e) Whenever ownership or possession of land in agricultural use is transferred, a certificate of entitlement with respect to such land shall be deemed to run with the land, so long as the water use continues to be for agricultural irrigation. Upon any such land transfer, the Executive Director will reissue a certificate of entitlement to the new user.

(f) A certificate of entitlement may be transferred in connection with a corporate reorganization within any of the following categories:

(1) Whenever property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are